

APPLICATIONS NOT ORIGINATED

OVERVIEW

The following procedures have been designed to assist examiners in conducting a review of denied and withdrawn loan applications. Utilizing the procedures as they are presented should enable the examiner to review for compliance with all applicable regulations with just a single review of each file.

The procedures are segregated by the various time frames associated with regulatory requirements, for example, at application, within three business days of application, etc. and then by regulation. The procedures are written for the most common open-end and closed-end types of credit reviewed; however, the procedures can be utilized for other types of loans such as second or vacation homes. The examiner must determine which regulations are applicable to the particular loan type and proceed accordingly.

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**REGULATION
OVERVIEW**

The following rules and regulations will be addressed within this section of the manual. These comments are given to provide the examiner a general explanation and purpose of the rule or regulation. Specific requirements are discussed and listed with the applicable sections.

**Equal Credit
Opportunity Act
(ECOA)**

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, is implemented by the Federal Reserve Board's Regulation B, Equal Credit Opportunity.

Regulation B prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), receipt of income from a public assistance program, and the good faith exercise of any right under the Consumer Credit Protection Act. These factors are referred to throughout the regulation as "prohibited bases".

Regulation B deals with taking, evaluating and acting on applications for credit accounts and the furnishing and maintenance of credit information. It does not prevent a creditor from obtaining information necessary to evaluate the creditworthiness of an applicant.

The regulatory references in this section are to Regulation B, 12 CFR Part 202.

**Fair Credit
Reporting Act
(FCRA)**

The Fair Credit Reporting Act (FCRA) was designed to:

- Regulate the consumer reporting industry
- Place disclosure requirements on users of credit reports
- Ensure fair, timely, and accurate reporting of credit information

The FCRA also:

- Restricts the use of reports on consumers
- Requires, in certain situations, the deletion of obsolete information from a consumer's credit report

Financial institutions are likely to be subject to the FCRA as users of information obtained from credit reporting agencies. In addition, certain institutions function as consumer reporting agencies, and to the extent that they issue consumer reports, are subject to FCRA.

**REGULATION
OVERVIEW
(cont'd)**

The statutory references in this section are to the sections of FCRA as they appear in Title VI of the Consumer Credit Protection Act, Consumer Credit Reporting.

**Fair Credit
Reporting Act
(FCRA)****Fair Housing,
Part 338 of the
Regulations**

The purpose of the FDIC's Fair Housing regulations, is two-fold: (1) to provide guidance on nondiscriminatory Regulations advertising for loans made for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or for any loan secured by a dwelling; and (2) to further establish certain data collection and recordkeeping requirements for home loan applicants and applications.

The regulatory references in this section are to Fair Housing, 12 CFR Part 338.

**Home Mortgage
Disclosure Act
(HMDA)**

The purpose of the Home Mortgage Disclosure Act (HMDA) is to make publicly available information about an institution's home mortgage lending. HMDA requires covered institutions to compile and disclose data about the home mortgage applications they receive and the home purchase and improvement loans they make. Specifically, HMDA requires that institutions report certain data about each application or loan, such as the location of the subject property, and the race or national origin, sex, and gross annual income of the applicant.

The regulatory references in this section are to the Federal Reserve Board's Regulation C, Home Mortgage Disclosure, 12 CFR Part 203, HMDA's implementing regulation.

**Real Estate
Settlement
Procedures Act
(RESPA)**

The purpose of the Real Estate Settlement Procedures Act (RESPA) is to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. RESPA also protects borrowers against certain abusive practices, such as kickbacks, and places limitations on the use of escrow accounts.

The regulatory references in this section are to the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures, 24 CFR Part 3500, RESPA's implementing regulation.

**REGULATION
OVERVIEW
(cont'd)****Truth in
Lending (TIL)
Act**

The purpose of the Truth in Lending (TIL) Act is to provide a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various terms available and avoid the uninformed use of credit. It also protects consumers against inaccurate and unfair credit card billing practices.

The regulatory references cited in this section are to the Federal Reserve Board's Regulation Z, Truth in Lending, 12 CFR Part 226, TIL's implementing regulation.

DEFINITION(S)

As defined by Regulation B, the term means:

Adverse Action

A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered

A termination of an account or an unfavorable change in terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts

A refusal to increase the amount of credit available to a borrower who has made an application for an increase

Application

As defined by Regulation B, the term means:

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit

As defined by Regulation C, the term means:

An oral or written request for a home purchase or written request for a home purchase or home improvement loan that is made in accordance with procedures established by a financial institution for the type of credit requested

DEFINITION(S)
(cont'd)

As defined by RESPA (Regulation X), the term means:

The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan

If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

NOTE: The Official Staff Commentary for Section 226.19(a)(1) of Regulation Z defers to RESPA and Regulation X in determining whether a written application is received.

**Completed
Application**

An application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (Including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral.) The creditor shall exercise reasonable diligence in obtaining such information.

**Residential
Mortgage
Transaction**

A transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

**Withdrawn
Application**

An application withdrawn voluntarily by the applicant and not as the result of implied adverse action by the creditor.

**GENERAL
PROCEDURES****Applicable to All
Credit
Applications**

Equal Credit Opportunity Act (ECOA)	
1.	<p>Review a sample of rejected credit applications, with particular emphasis on applications from women and minorities. Determine whether:</p> <p style="padding-left: 40px;">The information available on the records supports the reasons for denial stated on the adverse action notices</p> <p style="padding-left: 40px;">The reasons for rejection are consistent with the institution's written and/or oral policies as previously determined and were applied consistently to both minority and non-minority applicants</p> <p>(202.4)</p>
2.	<p>Determine that no prohibited information:</p> <p style="padding-left: 40px;">Appears in the files</p> <p style="padding-left: 40px;">Was considered in evaluating an application</p> <p style="padding-left: 40px;">Was used as a basis in denying an application</p> <p>(202.4)</p>
3.	<p>Determine that information concerning the spouse of an applicant is obtained only where permitted. (202.5(c))</p>
4.	<p>Determine whether childbearing intentions/capabilities are considered. (202.5(d)(4))</p>
5.	<p>Determine whether the institution considered all income to the extent that it will continue and does not discount income on a prohibited basis. (202.6(b)(5))</p>
6.	<p>Determine whether credit history, when used by the financial institution, is considered in accordance with applicable requirements. (202.6(b)(6))</p>
7.	<p>Determine whether applications for individual accounts are not refused because of the applicant's sex, marital status or any other prohibited basis. (202.7(a))</p>
8.	<p>Determine whether required records are maintained for 25 months. (202.12)</p>

GENERAL PROCEDURES

**Applicable to All
Credit
Applications**

CONSUMER CREDIT PROCEDURES

Applicable to the following types of applications:

Installment
Credit Cards

Equal Credit Opportunity Act (ECOA)	
1.	Perform ECOA General Procedures.
2.	<p>Determine whether accurate notifications of adverse action were given to applicants within the required time periods.</p> <p>A creditor shall notify an applicant of action taken within the following time periods:</p> <p>30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application</p> <p>30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c)</p> <p>30 days after taking adverse action on an existing account</p> <p>90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered</p> <p>(202.9(a)(1))</p> <p><i>NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))</i></p>

**CONSUMER
CREDIT
PROCEDURES
(cont'd)**

The adverse action notification must be in writing and include the following:

NOTE: For small-volume (received 150 or less during the preceding calendar year) creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.9(d))

Statement of action taken

Name and address of creditor

Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice)

Name and address of the federal agency that administers compliance with respect to the creditor

The creditor must provide either of the following:

- Statement of specific reasons for the action taken
- Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

Fair Credit Reporting

1. Review a sample of rejected loan files and discuss with appropriate personnel to determine whether:

The institution uses credit bureau reports or other outside information in evaluating credit applications

The institution as a user makes the required disclosures (615(a))

The institution has procedures in place to provide consumers (upon request) the nature of "other" outside information (615(b))

**DEALER
PAPER
PROCEDURES**

When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required.

**Applications
Submitted by a
Third Party
(Dealer)**

If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

**Applications
Denied by
Financial
Institutions****Equal Credit Opportunity Act (ECOA)**

1. Perform ECOA General Procedures.

2. Determine whether accurate notifications of adverse action were given to applicants within the required time periods.

A creditor shall notify an applicant of action taken within the following time periods:

30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application

30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c)

30 days after taking adverse action on an existing account

90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered

(202.9(a)(1))

NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))

The adverse action notification must be in writing and include the following:

NOTE: For small-volume creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.09(d))

Statement of action taken

**DEALER
PAPER
PROCEDURES
(cont'd)**

**Applications
Denied by
Financial
Institutions
(cont'd)**

Name and address of creditor

Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice)

Name and address of the federal agency that administers compliance with respect to the creditor

The creditor must provide either of the following:

- Statement of specific reasons for the action taken
- Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

Fair Credit Reporting

1. Review an adequate sample of rejected loan files and discuss with appropriate personnel to determine whether:

The institution uses credit bureau reports or other outside information in evaluating credit applications

The institution as a user makes the required disclosures (615(a))

The institution has procedures in place to provide consumers (upon request) the nature of "other" outside information (615(b))

**Applications
Denied by Third
Party**

Applications Denied by a Third Party

1. Review the agreement between the third party and the financial institution.

**DEALER
PAPER
PROCEDURES
(cont'd)**

**Applications
Denied by Third
Party**

2. Review a notice of adverse action sent by the third party for the following:

ECOA
Fair Credit Reporting

Refer to the tables below for specific procedures.

Equal Credit Opportunity Act (ECOA)

1. Perform ECOA General Procedures.

2. Determine whether accurate notifications of adverse action were given to applicants within the required time periods.

A creditor shall notify an applicant of action taken within the following time periods:

30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application

30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c)

30 days after taking adverse action on an existing account

90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered

(202.9(a)(1))

NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))

The adverse action notification must be in writing and include the following:

NOTE: For small-volume creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.09(d))

Statement of action taken

Name and address of each creditor on whose behalf the notice was given

**DEALER
PAPER
PROCEDURES
(cont'd)**

**Applications
Denied by Third
Party**

Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice)

Name and address of the federal agency that administers compliance with respect to the creditor

The creditor must provide either of the following:

- Statement of specific reasons for the action taken
- Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

Fair Credit Reporting

1. Review an adequate sample of rejected loan files and discuss with appropriate personnel to determine whether:

The institution uses credit bureau reports or other outside information in evaluating credit applications

The institution as a user makes the required disclosures (615(a))

The institution has procedures in place to provide consumers (upon request) the nature of "other" outside information (615(b))

**REAL ESTATE
LOANS AT
APPLICATION**

Equal Credit Opportunity Act (ECOA)

1. Determine whether the institution required written applications for credit primarily for the purchase or refinance of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling. (202.5(e))

**REAL ESTATE
LOANS AT
APPLICATION
(cont'd)**

Fair Housing

1. Determine, for financial institutions **not** located in a metropolitan statistical area (MSA) or with total assets as of December 31 of the preceding calendar year of \$10 million or less, that the following applicant information was collected, excluding applications received by telephone:

Date of application

Case identification

-- Name

-- Address

-- Location (street address, city, state, and zip code) of subject property

-- Sex

-- Race/national origin

-- Age

-- Marital status

This information can be collected on the application or on a separate sheet which refers to the application. (338.7(a)(1)(i))

NOTE: If the information regarding race and sex is not voluntarily furnished, the financial institution shall note the information, based on visual observation or surname, on the application or an attached document. (338.7(a)(1)(ii))

2. Determine, for financial institutions located in a MSA and having total assets exceeding \$10 million as of December 31 of the preceding calendar year, that the following applicant information was collected:

The same data as listed in 1 above plus loan type and case disposition (338.7(a)(2)(i))

The following additional data is collected:

-- Employment

-- Income

-- Number of dependents

**REAL ESTATE
LOANS AT
APPLICATION
(cont'd)**

- Total assets
- Total liabilities
- Total monthly payments on liabilities
- Customer(s) of the financial institution (yes or no)
- Subject property information, for example, year built, purchase price, land value (construction loan only), address, census tract, and number of residential units
- Loan request information, for example, purpose, type of mortgage, amount, interest rate, months to maturity, monthly payment, principal, and interest, estimated total closing costs, estimated closing costs paid by seller, and estimated real estate taxes and insurance

(338.7(a)(2)(ii))

NOTE: If the information regarding race and sex is not voluntarily furnished, the financial institution shall note the information, based on visual observation or surname, on the application or an attached document. (338.7(a)(2)(ii))

3. Determine that the financial institution advised the applicant that the information regarding race/national origin, marital status, age, and sex is being requested to enable the FDIC to monitor compliance with the Fair Housing and Equal Credit Opportunity Acts which prohibit creditors from discriminating against applicants on prohibited bases; the FDIC encourages the applicant to provide the information requested; and if the applicant refuses to provide the information concerning race/national origin or sex, the financial institution is required, where possible, to note the information on the basis of visual observation or surname.

(338.(b)(1))

Truth in Lending

4. Determine that the financial institution has provided the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet or a suitable substitute, if the loan is an adjustable rate mortgage loan with a term greater than one year at application. (This rule does not apply to assumptions.) (226.19(b)(1))

**REAL ESTATE
LOANS AT
APPLICATION
(cont'd)**

5. Determine that a loan program disclosure for each variable rate program in which the consumer expresses an interest, was provided at application and included the following, as applicable:

The fact that the interest rate, payment, or term of the loan can change

The index or formula used in making adjustments, and a source of information about the index or formula

The index may be internally defined by the financial institution (See Official Staff Commentary).

An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin

A statement that the consumer should ask about the current margin value and current interest rate

The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount

The frequency of interest rate and payment changes

Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover

A historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program

NOTE: The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index's movement during the period. If the program is less than 15 years old, the history should only cover the length of the life of the program. Also, the index rates should only go back as far as the financial institution can reasonably determine the rates.

**REAL ESTATE
LOANS AT
APPLICATION
(cont'd)**

An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example

The maximum interest rate and payment for a \$10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan

The fact that the loan program contains a demand feature

The type of information that will be provided in notices of adjustments and the timing of such notices

A statement that disclosure forms are available for the financial institution's other variable rate loan programs

(226.19(b)(2))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS**

Truth in Lending

6. Determine whether the required disclosures or Good Faith Estimate (GFE) was provided at consummation or within 3 business days, whichever is earlier, for residential mortgage transactions. (226.19(a))

NOTE: This requirement may not apply if the application was denied prior to the third business day.

7. Determine that the disclosures are grouped together, segregated from other material, and made clearly and conspicuously in writing in a form the consumer may keep. (226.17(a)(1))

8. Determine that the terms "finance charge" and "annual percentage rate", when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other disclosure. (Those terms need not be more conspicuous than the financial institution's identity.) (226.17(a)(2))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

9. Determine the presence and accuracy of the following items in the Truth in Lending disclosure, as applicable.

Refer to the Truth in Lending Calculation Program Appendix in this manual for instructions on how to calculate the APR.

The identity of the financial institution making the disclosures. The financial institution's name is sufficient; however, the address and telephone number can be included (226.18(a))

The "amount financed", using that term, and a brief description, such as "the amount of credit provided to you or on your behalf"

The amount financed should be compared to the principal amount on the note. The amount financed should be less than the principal amount if origination fees or other prepaid charges were applicable, otherwise these amounts should be the same.

The amount financed is calculated by using the following procedures:

- Determine the principal loan amount or the cash price (subtracting any downpayment)
- Add any other amounts that are financed by the creditor and are not part of the finance charge
- Subtracting any prepaid finance charge

(226.18(b))

A separate, written itemization of the amount financed, including:

- The amount of any proceeds distributed directly to the consumer
- The amount credited to the consumer's account with the financial institution
- Any amounts paid to other persons by the creditor on the consumer's behalf (identifying those persons)
- Pre-paid finance charges

A separate, written itemization of the amount financed is not required where a statement is included that the consumer has the right to receive a written itemization and the consumer has not indicated in a space provided that such an itemization is desired.

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

NOTE: Good Faith Estimates of settlement costs provided for transactions subject to RESPA may be substituted for the disclosures required by Section 226.18(c).

The "finance charge", using that term, and a brief description, such as "the dollar amount the credit will cost you"

The finance charge should include all finance charges outlined in Section 226.4. (226.18(d))

The "annual percentage rate", using that term, and a brief description, such as "the cost of your credit as a yearly rate"

The APR should be within the allowed tolerance of 1/8 of 1% (0.125) for regular transactions and 1/4 of 1% (0.25) for irregular transactions (an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment). (226.18(e) and 226.22)

Refer to footnotes in Section 226.22 for more guidance.

If the APR may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less the following disclosures are required:

NOTE: Provided CHARM and ARM loan program disclosures required by Section 226.19(b) and 226.18(f)(2) disclosures have not been substituted.

- The circumstances under which the rate may increase
- Any limitations on the increase
- The effect of an increase
- An example of the payment terms that would result from an increase (226.18(f)(1))

If the APR may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures should be provided:

- The fact that the transaction contains a variable rate feature
- A statement that variable-rate disclosures have been provided earlier (226.18(f)(2))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

The number, amounts, and timing of payments scheduled to repay the obligation

The number of payments multiplied by the amount of payments should equal the total of payments. Verify the number, amounts, and timing of payments with the legal obligation. (226.18(g))

- The "total of payments", using that term, and a descriptive explanation, such as "the amount you will have paid when you have made all scheduled payments" (226.18(h))

NOTE: Both the number and amount of payments, as well as the finance charge plus the amount financed, should equal total of payments. The total of payments may be omitted in a single-payment transaction; however, this exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

The fact that the obligation has a demand feature and that the disclosures are based on an assumed maturity of one year if no alternate maturity date is stated

This feature should only be utilized if the loan is truly made "on demand", for example, the loan can be called at any time for any reason. (226.18(i))

Refer to Regulation Z Staff Commentary.

In a credit sale, the "total sale price", using that term, and a descriptive explanation (including the amount of any downpayment), such as "the total price of your purchase on credit, including your downpayment of \$_____"

This could be applicable to a residential mortgage when it concerns financial institution-financed Other Real Estate (226.18(j))

If the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether a penalty may be imposed if the obligation is prepaid in full

If the obligation includes a precomputed finance charge, a statement indicating whether the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full. The prepayment penalty clause ideally should only be utilized on simple interest notes and the rebate clause should only be utilized on precomputed notes. However, when a simple interest note includes private mortgage insurance the rebate clause should also be utilized. (226.18(k))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

Any dollar or percentage charge that may be imposed before maturity due to a late payment (This amount should be compared to what is specified in the legal obligation to ensure the correct terms have been stated.) (226.18(l))

The fact that the financial institution has or will acquire a security interest in the property purchased as part of the transaction or in other property identified by item or type (For residential property, utilizing the "goods or property purchased" clause will suffice.) (226.18(m))

To exclude certain insurance premiums from the finance charge, the following conditions must be disclosed:

- For premiums for credit life, accident, health, or loss-of-income insurance:
 - (i) That the insurance coverage is not required by the financial institution.
 - (ii) The premium for the initial term of insurance coverage and if the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed.
 - (iii) That the consumer signed or initialed an affirmative written request for the insurance after receiving the disclosures specified above. (Any consumer in the transaction may sign or initial the request.)

These conditions can be contained within the credit insurance application form, as well as any other separate form.

(226.4 (d))

- For premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property:
 - (i) That the insurance coverage may be obtained from a person of the consumer's choice.
 - (ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage. (If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed.)

(226.18(n) and 226.4(d))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

The disclosures required to exclude certain security interest charges from the finance charge (226.18(o))

If itemized and disclosed, the following charges may be excluded from the finance charge:

- Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest
- The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described above that otherwise would be payable. (226.4(e))

A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation and prepayment rebates and penalties (This statement can usually be found in small print at the bottom of the "Fed" box.) (226.18(p))

A statement whether a subsequent purchaser of the dwelling may be permitted to assume the remaining obligation on its original terms (226.18(q))

If the financial institution requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit

This **does not** apply to deposits earning 5% or more per year, an escrow account for items such as taxes, insurance, or repairs, or payments under a Morris Plan. (226.18(r))

Real Estate Settlement Procedures (RESPA)

1. Determine, through discussions with management and a review of credit files, whether the Special Information Booklet (SIB) is provided within three business days from the time the financial institution receives a written application for a loan. The SIB is not required for refinanced loans. (3500.6(a))

**REAL ESTATE
LOANS AT
APPLICATION
OR WITHIN
THREE
BUSINESS
DAYS
(cont'd)**

2. In conjunction with the above step, determine whether the financial institution provides a good faith estimate (GFE) of settlement costs within three business days after receipt of a written application. Also, ensure the GFE was disclosed in the required format. (3500.7(a), 3500.7(c), and 3500.7(d))

NOTE: This requirement may not apply if the application was denied prior to the third business day.

3. A mortgage servicing disclosure statement, if a face to face interview was not conducted. (3500.21(d))

**ADVERSE
ACTION
TAKEN**

Equal Credit Opportunity Act (ECOA)

1. Perform ECOA General Procedures.

2. Determine whether accurate notifications of adverse action were given to applicants within the required time periods.

A creditor shall notify an applicant of action taken within the following time periods:

30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application

30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c)

30 days after taking adverse action on an existing account

90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered

(202.9(a)(1))

NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))

**ADVERSE
ACTION
TAKEN
(cont'd)**

The adverse action notification must be in writing and include the following:

NOTE: For small-volume creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.09(d))

Statement of action taken

Name and address of creditor

Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice)

Name and address of the federal agency that administers compliance with respect to the creditor

The creditor must provide either of the following:

- Statement of specific reasons for the action taken
- Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

Fair Credit Reporting

1. Review an adequate sample of rejected loan files and discuss with appropriate personnel to determine whether:

The institution uses credit bureau reports or other outside information in evaluating credit applications

The institution as a user makes the required disclosures (615(a))

The institution has procedures in place to provide consumers (upon request) the nature of "other" outside information (615(b))

**ADVERSE
ACTION
TAKEN
(cont'd)****Fair Housing**

1. For a financial institution located in a MSA and having assets over \$10 million, determine whether the loan transaction was recorded on the loan application register within 30 calendar days after the loan application was disposed of (that is, the application was denied or withdrawn, or the loan went to closing). (338.8(c))
2. Determine whether required records are maintained for 25 months. (338.7(c))

Home Mortgage Disclosure

1. Determine whether the loan transaction was accurately recorded on the LAR within 30 days after the end of each calendar quarter in which final action was taken. (203.4(a))

**BUSINESS
CREDIT****Adverse Action Taken**

1. Perform ECOA General Procedures.
2. Determine whether accurate notifications of adverse action were given to applicants within the required time periods.

NOTE: For businesses with gross revenues of \$1,000,000 or less in the preceding fiscal year, a credit will comply with the following except that the statement of action taken may be given orally or in writing and an applicant's right to a statement of reasons may be given at the time of application provided the disclosure is in a form that the applicant may retain and contains the information contained in the ECOA Notice.

A creditor shall notify an applicant of action taken within the following time periods:

30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application

30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c)

**BUSINESS
CREDIT
(cont'd)**

30 days after taking adverse action on an existing account

90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered

(202.9(a)(1))

NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))

The adverse action notification may be in writing or given orally and must include the following:

NOTE: For small-volume creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.09(d))

Statement of action taken

Name and address of creditor

Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice)

Name and address of the federal agency that administers compliance with respect to the creditor

The creditor must provide either of the following:

- Statement of specific reasons for the action taken
- Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

**WORKPAPER
STANDARDS**

Standardized workpapers must be completed when reviewing compliance with the regulations discussed in the Applications Not Originated section. Refer to the Standardized Workpaper Appendix in this manual.



**FDIC LAW,
REGULATIONS
, & RELATED
ACTS**

Applicable Rules

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Advisory
Opinions**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Statements of
Policy**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**DCA
MEMORANDA**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.
